



MONEY MANAGEMENT INSTITUTE

ADVANCING THE FUTURE OF
INVESTMENT ADVICE AND SOLUTIONS

MMI NetMeeting

March 19, 2020

MMI - Update on SEC & FINRA Relief to Address COVID-19

Introduction:

Craig Pfeiffer, President & CEO, Money Management Institute

Featured Speakers:

Steve Stone, Partner, Morgan, Lewis & Bockius

Christine Lombardo, Partner, Morgan, Lewis & Bockius



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Update on SEC & FINRA Relief to Address COVID-19

- Key Elements of Advisers Act Relief
- SEC Staff Investment Adviser FAQs
- Key Elements of the 1940 Act Relief
- Relief from In-Person Board Meetings
- Relief on Certain Section 13 Reports
- SEC Staff Relief from CAT Implementation
- Key Areas of FINRA Relief
- Additional Areas of Relief
- Areas to Watch

Key Elements of Advisers Act Relief

Order Under Section 206A of the Investment Advisers Act of 1940 Granting Exemptions from Specified Provisions of the Investment Advisers Act and Certain Rules Thereunder (Mar. 13, 2020).

The Advisers Act Order provides up to an additional 45 days for Advisers to satisfy the filing and delivery requirements if reliance is necessary or appropriate due to circumstances related to the current or potential effects of COVID-19:

- Amendments to Form ADV required to be filed by registered investment advisers under Rule 204-1 of the Advisers Act or reports required to be filed by exempt reporting advisers on Form ADV part 1A under Rule 204-4
- Amended brochures, brochure supplements, or summaries of material changes required to be delivered by registered investment advisers to clients under Rules 204-3(b)(2) and (b)(4)
- Form PF filings required to be made by registered private fund advisers under Section 204(b) and Rule 204(b)-1 of the Advisers Act

An Adviser relying on the order must promptly provide the SEC via e-mail at IARDLive@sec.gov (for Form ADV or delivery of its brochure, summary of material changes, or brochure supplement) or at FormPF@sec.gov (for Form PF) the following:

- Notice that it is relying on the order
- Brief description of the reasons why it could not make the required filing or delivery, as applicable, on a timely basis
- Estimated date by which the Adviser expects to make the required filing or delivery, as applicable
- An Adviser relying on the Advisers Act Order for the filing of Form ADV or delivery of its brochure, summary of material changes, or brochure supplement must disclose the above information on its website (or if it does not have a website, promptly notify clients and/or private fund investors).

Note: This relief is limited to filing or delivery obligations for which the original due date is on or after the date of the Advisers Act Order but on or prior to April 30, 2020.

SEC Staff Investment Adviser FAQs

SEC's Division of Investment Management (March 16) FAQs

- Advisers are not required to update either Item 1.F of Part 1A of Form ADV or Section 1.F of Schedule D to include temporary teleworking addresses of employees if the employees are temporarily teleworking as part of the firm's business continuity plan due to COVID-19.
- SEC Staff updated Custody Rule FAQ II.1., stating that if an Adviser inadvertently receives funds or securities from clients at an office location that is temporarily closed due to the firm's business continuity plan in response to COVID-19, the SEC Staff would not consider the Adviser to have received client assets until firm personnel are able to access the mail or deliveries at that office location.

Key Elements of the 1940 Act Relief

Order under Section 6(C) and Section 38(A) of the Investment Company Act of 1940 Granting Exemptions from Specified Provisions of the Investment Company Act and Certain Rules Thereunder; Commission Statement Regarding Prospectus Delivery (Mar. 13, 2020).

- Relief from In-Person Board Meetings
- Relief from N-CEN and N-Port Filing, Annual & Semi-Annual Report Transmittal Requirements
- Relief from 30-Day Requirement for Form N-23C-2 Filings
- Statement Regarding Prospectus Delivery

Relief from In-Person Board Meetings

Relief from In-Person Board Meetings

- Registered funds and BDCs are relieved from applicable 1940 Act requirements that certain agreements, plans, or arrangements be approved by the company's board of directors by an in-person vote, due to circumstances related to COVID-19's current or potential effects, provided that
- the votes that would otherwise be required to be cast at an in-person meeting are instead cast at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting
- the board of directors, including a majority of the directors who are not interested persons of the registered investment fund or BDC, ratifies the action taken pursuant to this exemption by vote cast at the next in-person meeting.

In the 1940 Act Order may only be relied on if it is "necessary and appropriate" due to circumstances related to the current or potential effects of COVID-19

Registered funds and BDCs should consider including in the minutes of any board meetings held by conference call (or other qualifying means of communication) in reliance on the 1940 Act Order (1) a statement that the non-in-person meeting was determined by the board to be "necessary and appropriate" due to circumstances related to COVID-19, and (2) a summary of the board's considerations in making such determination.

Note: This relief is currently limited to the period from and including the date of the 1940 Act Order to June 15, 2020.

Relief from N-CEN and N-Port Filing, Annual & Semi-Annual Report Transmittal Requirements

The 1940 Act Order provides up to an additional 45 days for registered funds or unit investment trusts to satisfy the filing and transmittal requirements if reliance is necessary or appropriate due to circumstances related to the current or potential effects of COVID-19:

- Form N-CEN filings required to be made by registered funds pursuant to Rule 30a-1 under the 1940 Act
- Form N-PORT filings required to be made by registered funds pursuant to Rule 30b1-9 under the 1940 Act
- Annual and semi-annual reports required to be transmitted by registered funds or unit investment trusts to investors pursuant to Section 30(e) of the 1940 Act and Rule 30e-1 thereunder

This relief is conditioned on the following:

- A registered fund or UIT must promptly provide to the SEC via e-mail (1) notice that it is relying on the 1940 Act Order; (2) a brief description of the reasons why it could not make the required filing or transmittal, as applicable, on a timely basis; and (3) the estimated date by which it expects to make the required filing or transmittal, as applicable.
- A registered fund or UIT must include a statement on its website briefly stating that it is relying on the 1940 Act Order and the reasons why it could not make the filing or transmittal on a timely basis.
- Any Form N-CEN or Form N-PORT filed pursuant to the 1940 Act Order must include a statement of the registered fund that it relied on the 1940 Act Order and the reasons why it was unable to file such report on a timely basis.
- Any shareholder report transmitted pursuant to the 1940 Act Order must also be filed within 10 days of its transmission to shareholders.

Note: This relief is limited to filing or transmittal obligations for which the original due date is on or after the date of the 1940 Act Order but on or prior to April 30, 2020.

Relief from 30-Day Requirement for Form N-23C-2 Filings

The 1940 Act Order further provides relief for registered closed-end funds and BDCs from the requirement to file a Form N-23C-2 (Notice) at least 30 days prior to calling or redeeming securities, provided that a relying closed-end fund or BDC:

- Promptly provides to the SEC via e-mail (1) a statement that it is relying on the 1940 Act Order, and (2) a brief description of the reasons why it needs to file a Notice fewer than 30 days in advance of the date set for calling or redeeming the securities
- Ensures that the filing of the Notice on an abbreviated timeframe is permitted under relevant state law and applicable governing documents
- Files a Notice that contains all the information required by Rule 23c-2 prior to (1) any call or redemption of existing securities, (2) the commencement of any offering of replacement securities, and (3) notification to the existing shareholders whose securities are being called or redeemed

Note: This relief is limited to the period from and including the date of the 1940 Act Order to June 15, 2020.

Statement Regarding Prospectus Delivery

The SEC stated that it would not provide a basis for an SEC enforcement action if a registered fund does not deliver to investors its current prospectus in instances where the prospectus is not able to be timely delivered because of circumstances related to COVID-19, if:

- The sale of shares to the investor was not an initial purchase of shares of the registered fund by the investor;
- The registered fund provides to the SEC via e-mail (1) a statement that it is relying on this position, (2) a brief description of the reasons why it or any other required person could not deliver the prospectus to investors on a timely basis, and (3) the estimated date by which it expects the prospectus to be delivered;
- The registered fund publishes on its website that it intends to rely on this position and briefly states the reasons why it could not deliver the prospectus on a timely basis; and
- The registered fund publishes its current prospectus on its website.

Note: Reliance on this position is limited to prospectus deliveries that were originally required on or after the date of the 1940 Act Order but on or prior to April 30, 2020, and that are ultimately made to investors as soon as practicable but no later than 45 days after the date originally required.

Relief on Certain Section 13 Reports

Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions from Specified Provisions of the Exchange Act and Certain Rules Thereunder (March 4, 2020)

- Filers unable to meet the filing deadline for a Schedule 13G filing or amendment before April 30, 2020 due to circumstances related to COVID-19:
 - **Have an additional 45 days to file the Schedule 13G filing.**
 - **Any Schedule 13G filer relying on the order must disclose when it files the Schedule 13G that it relied on the order why it could not file the schedule on time.**
 - **Schedule 13D and 16 filings (Form 3 and Form 4) are carved out.**

SEC Staff Relief from CAT Implementation

Division of Trading and Markets – Consolidated Audit Trail (“CAT”) No-Action Letter (Mar. 16, 2020)

- Staff will not recommend enforcement against CAT Participants (exchanges and SROs) for not enforcing CAT implementation deadlines against Industry Members, which were set to require certain reporting by Large Industry Members beginning April 20, 2020 (and later for Small Industry Members).
- Chair Clayton on March 17, 2020:

“At this time, a wide range of broker-dealers are actively testing and refining their ability to report to CAT. COVID-19’s impact on market participants, including necessitating SROs and broker-dealers to implement their business continuity plans, has placed stress on their information technology infrastructure and required the deployment of significant resources, including to implement and adapt business continuity plans. To allow firms to maintain focus on operational readiness and reduce operational risk, SEC staff has issued a no-action letter regarding the SROs’ enforcement of their CAT compliance rules through May 20, 2020 so that personnel who are working on CAT matters but are important to maintaining critical operations and implementing business continuity plans can focus their attention on those immediate needs.”
- For those Industry Members that have completed the required production readiness certifications and are ready to begin reporting as of April 20, 2020, the CAT will be ready to accept CAT reports from Industry Members as of April 20, 2020.
- Note: This relief applies only until May 20, 2020, but could be extended.

Key Areas of FINRA Relief

FINRA FAQs – Form U4 Wet Signature Requirement

- Relief from Rule 1010(c)'s requirement that initial and transfer electronic Form U4 filings be based on manually (wet) signed Forms U4.
- Firms can electronically file an initial or transfer Form U4 without obtaining the individual applicant's manual signature if the firm:
 - provides the applicant with a copy of the completed Form U4 prior to filing;
 - obtains the applicant's written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed, and that the applicant agrees that the content is accurate and complete;
 - retains the written acknowledgment in accordance with Rule 17a-4(e)(1) and makes it available promptly upon regulatory request; and
 - obtains the applicant's manual signature as soon as practicable.
- Note: When appropriate, FINRA will publish a Regulatory Notice announcing a termination date for the regulatory relief that will provide member firms with time to make necessary operational adjustments.

Key Areas of FINRA Relief

Regulatory Notice 20-08

- Remote Offices or Telework Arrangements
 - FINRA acknowledged that on-site internal inspections (of OSJs, branch offices, and non-branch locations) “may need to be temporarily postponed during the pandemic,” and that the ability to complete this regulatory obligation in 2020 may need to be re-evaluated depending on the duration and severity of COVID-19.
- Form U4/Form BR
 - Temporary suspension of requirement to maintain updated Form U4 information regarding office of employment address for registered persons who temporarily relocate due to COVID-19.
 - No requirement to submit branch office applications on Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of recent events.
- Emergency Office Relocations
 - If a member relocates personnel to a temporary location that is not currently registered as a branch office or identified as a regular non-branch location, the firm should use its best efforts to provide written notification to its FINRA Risk Monitoring Analyst as soon as possible after establishing a new temporary office or space-sharing arrangement
 - The notice should include, at a minimum:
 - the office address;
 - the names of each member firm involved;
 - the names of registered personnel;
 - a contact telephone number;
 - if possible, the expected duration; and
 - whether the firm’s personnel will be sharing space with another entity, and if so, the type of business in which it is engaged (e.g., an affiliated investment adviser or an organization in the securities business).

Key Areas of FINRA Relief

Regulatory Notice 20-08 (cont'd)

- **Regulatory Filings and Responses to FINRA Inquiries, Matters, and Investigations**
 - Firms having difficulty making timely regulatory filings (e.g., FOCUS filings, Form Custody filings, and supplemental FOCUS information) and responding to regulatory inquiries or investigations should contact their Risk Monitoring Analysts or the relevant FINRA department to seek extensions.
 - FINRA may waive applicable late fees incurred by a member firm based on the member firm's particular circumstance.
 - If any data communications are disrupted, firms should retain the relevant data until it can be transmitted to FINRA.
- **Qualification Examinations and Regulatory Element Continuing Education**
 - FINRA encourages individuals with upcoming qualification exams or continuing education windows that are due to expire to contact FINRA to request courtesy cancellations and/or extensions
- **Membership Proceedings**
 - FINRA will grant courtesy extensions on new or continuing membership applications, if needed.
- **Note: Relief to expire “as COVID-19-related risks decrease.”**

Additional Areas of Relief

- Custody
 - Engagement and conduct of surprise exams
 - Financial statements for pooled vehicles (& SEC FAQ on “unforeseeable circumstances”)
- Remote employees
 - Remote supervision
 - Record retention and WORM
 - Regulatory identification and licensing of branch and other offices
 - State adviser and IAR licensing based on place of business
 - Tape recording of personnel (FINRA & FCA)
- In person requirements
 - Notarization
 - Fingerprinting
- Annual 206(4)-7 Reviews
- Annual Code of Ethics Certifications
- FINRA office examinations
- FINRA procedures reviews and CEO certifications
- June 30 Retail Advice Deadlines
 - Regulation Best Interest Implementation
 - Form CRS Implementation
- Other?

Areas to Watch

- **Business Conduct**
 - **Shelter in Place Orders**
 - **Vendor BCP, force majeure provisions and contingency planning**
 - **Insurance coverage**
 - **Cyber security risks from remote working**

Advisory Activities

- **Trading restrictions**
 - Short sale restrictions (e.g., EU, Belgium, France, Italy, Spain, South Korea)
 - Market closures
- **Pricing, valuation and cross trade prices**
- **Liquidity and capacity issues**
- **Issuers deferring Exchange Act reports under SEC's March 4 order**
- **Risk disclosures**

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CORONAVIRUS COVID-19 **ADDRESSING TODAY'S CRISIS, TOMORROW'S LEGAL CHALLENGES**

As the coronavirus COVID-19 crisis rapidly evolves, global companies are looking for resources to protect their people and their businesses. Morgan Lewis lawyers are providing guidance on data privacy concerns, supply chain disruption, immigration status requirements, remote work opportunities and challenges, and ongoing federal and state updates.

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